Horizon Wind Energy
An EDP Renewables Company

Intermountain Rockies Regional Development Office
1526 Blake Street, Suite 200
Denver, Colorado 80202

303.568.1700 *phone*
866.887.6832 *toll free*
303.568.1699 *fax*

February 9, 2009

Courtney Feeley Karp
Massachusetts Department of Energy Resources
100 Cambridge Street, Suite 1020
Boston, MA 02114

Re: Written Comments by Horizon Wind Energy LLC to Proposed Final Regulations
225 CMR 14.00 – Renewable Energy Portfolio Standard Class I
225 CMR 15.00 – Renewable Energy Portfolio Standard Class II

Dear Ms. Karp:

Attached please find Horizon Wind's written comments to the final regulations proposed by the Department of Energy Resources regarding the Class I and Class II Renewable Energy Portfolio Standard, for the Department's review. We have appended our written comments to this cover letter and have also submitted them to the Department via email.

Should you have any additional questions or comments, please contact me at (303) 568-1700 x110 or tanuj.deora@horizonwind.com.

Very truly yours,

Tanuj "TJ" Deora
Project Development Manager

Written Comments by Horizon Wind Energy LLC
Proposed Final Regulations
225 CMR 14.00 – Renewable Energy Portfolio Standard Class I
225 CMR 15.00 – Renewable Energy Portfolio Standard Class II
Provided to the Department of Energy Resources

February 9, 2009

Horizon Wind Energy LLC ("Horizon") appreciates this opportunity to submit comments regarding the final Renewable Energy Portfolio Standard ("RPS") regulations proposed by the Massachusetts Department of Energy Resources ("DOER"). Horizon, in conjunction with other stakeholders, previously submitted comments dated October 1, 2008, in advance of the DOER's import feasibility study. Horizon has reviewed the emergency regulations promulgated on December 31, 2008 and seeks to submit additional comments before the DOER promulgates its final regulations.

By way of background, Horizon develops, constructs, owns and operates wind farms throughout North America. Based in Houston, Texas with over 25 offices across the United States, Horizon has developed more than 2,500 megawatts (MW) and operates over 2,000 MW of wind farms. Horizon operates three wind projects in New York state: Madison Wind Farm, which has an installed capacity of 12 MW, and two projects co-developed and co-owned with Iberdrola Renewables – Maple Ridge I with an installed capacity of 231 MW and Maple Ridge II with an installed capacity of 91 MW. Horizon is owned by EDP Renováveis S.A. ("EDPR"), a global leader in the renewable energy sector that designs, develops, manages and operates power plants that generate electricity using renewable energy sources.

Section 105 of the Green Communities Act ("GCA") directed DOER to assess the feasibility of implementing two distinct subsections:

(1) To require generators to commit their capacity to the Independent System Operator-New England ("ISO-NE") control area for the applicable annual period; and

(2) To prevent "greenwashing" or "roundtripping," whereby renewable energy and Renewable Energy Certificates ("RECs") are sold into Massachusetts, but a similar amount of energy is exported to another control area, effectively resulting in no net gain of green power. The subsection would require that DOER "net" any RECs issued for that renewable power by any exports of energy by the entity seeking Renewable Energy Portfolio Standard credit, an affiliate, or a contracted party.

In compliance with this legislative mandate, DOER conducted a stakeholder process to obtain comments from interested parties and filed a report to the General Court on October 31, 2008, ultimately culminating with the promulgation of emergency regulations and this comment period.

In its report to the General Court, DOER concluded that "while it is not feasible to implement Section 105 as drafted, we do believe it is possible to achieve, through modest changes in Renewable Portfolio Standard (RPS) regulations, the legislative intent of Section 105 – namely, to ensure that renewable power facilities which send their renewable energy into New England and receive a subsidy from Massachusetts ratepayers in the form of RECs also make themselves available as capacity resources; and also to guard against any "gaming" of the RPS system by swapping imported renewable energy for exports of non-green energy generated from here." Letter from Philip Giudice, Commissioner, Massachusetts Department of Energy Resources, to Steven James, Clerk of the Massachusetts House of Representatives, and William Welch, Clerk

of the Massachusetts Senate (Oct. 31, 2008).

To implement this finding, DOER issued emergency regulations that prohibit any resource receiving Massachusetts RECs to participate in any capacity markets other than New England's capacity market. Intermittent generators (those with capacity factors of less than 50 percent), will not be required to participate in the ISO-NE Forward Capacity Market ("FCM"). Id.

In its report, DOER determined that intermittent resources (as defined above) are primarily energy resources, not capacity resources, and there is no "discernable reliability or system benefit to requiring them to commit their capacity." Massachusetts Department of Energy Resources, Imports Feasibility Study: Capacity Commitment and Netting Requirement, at 7 (Oct. 31, 2008). However, DOER required that any generator participating in the Massachusetts RPS program not commit capacity to another control area to the extent of the percentage of the its production for which it is seeking Massachusetts RECs. Id. at 8.

In order to implement the above noted policy recommendations, the emergency regulations pertaining to the Class I RPS include a provision regarding capacity commitment which, in relevant part, states that the "amount of the generation capacity of the Generation Unit whose electrical energy output is claimed as RPS Class I Renewable Generation shall not be committed to any Control Area other than the ISO-NE Control Area . . . ." 225 CMR 14.05(1)(e)(1). The regulations for the Class II RPS contain identical language. 225 CMR 15.05(1)(e)(1).

Horizon recognizes the important and thoughtful decision reached in the first

instance by DOER by not requiring a capacity requirement on electricity imported into the ISO-NE control area from renewable generators located in control areas outside of and adjacent to ISO-NE. However, DOER's compromise decision to require that any participant in the Massachusetts RPS program not commit capacity to another control area may have the impact of increasing costs to Massachusetts consumers while achieving little, if any, incremental benefits, by way of availability, to the ISO-NE control area. In short, Massachusetts consumers and the ISO-NE control area will not benefit from preventing an external intermittent generator from becoming a capacity resource in its home control area if it wants to provide qualified RPS energy to Massachusetts.

The following illustrative example helps to outline the possibility of increased costs to consumers without the commensurate benefits of availability to the ISO-NE control area. Under the emergency regulations, in order to qualify to export renewable power to Massachusetts, a wind farm located in New York would have to forfeit capacity payments in the NY ISO market with no assured means of appropriately recouping them in ISO-NE. In financial terms, it is estimated that a wind farm in New York receives a capacity payment of approximately $1.77 for each generated MWh, so that a wind farm generating 200 MW annually may lose in excess of one million dollars in revenue by exporting to Massachusetts, without any corresponding benefits to the ISO-NE control area and Massachusetts consumers.[1]

[1] The calculation in this example is a function of the capacity that a wind generator can claim and UCAP auction prices. To calculate the capacity, NYISO looks at the wind farm's expected average production during times of high demand. A 200 MW wind farm would be expected to produce 56 MW during these peak hours. The strip price from the most recent UCAP auction was $1.77/kW-month, which translates to

Additionally, even though it has not fully committed its capacity to the ISO-NE control area, an external intermittent generator could continue to export power to ISO-NE most of the time. In practicality, only under emergency situations, when called upon in its home control area, would the generator be unavailable to ISO-NE. In reality, since the external intermittent generator supplying the New York ISO would be an available capacity resource to ISO-NE, save for under an emergency situation, the new requirement – inability to commit capacity to another control area – achieves a small incremental benefit, if any, while potentially imposing additional costs on Massachusetts consumers.

As the example above illustrates, external intermittent generators will forgo capacity payments in their home control area, and as such will likely seek to appropriately recoup these capacity payments in the ISO-NE control area. As a result, they may avoid the ISO-NE market altogether, thus reducing the available competition in the market and limiting the resources available for suppliers to purchase in order to fulfill their regulatory mandate. This artificial limit on the external renewable energy that can be imported into this state may translate into higher compliance costs for suppliers, which will ultimately be borne by consumers.

In order to avoid passing these additional costs onto Massachusetts consumers with no corresponding material benefit, Horizon therefore urges the DOER to remove the provision requiring external intermittent generators to fully commit their capacity to Massachusetts in order to qualify as a renewable generation unit from the final version of the regulations.

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approximately $21,000/MW-year. As a result, the operator of the wind farm can expect its capacity revenue to be approximately $1.2 million per year.